

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

SCOTT MALCOLM and TIM MCGOUGH,

Plaintiffs,

Civil No. 05-2099 (JRT/FLN)

v.

VERTICAL HORIZON, INC., VERTICAL
HORIZON CONSTRUCTION LLC and
MICHAEL SHAWN LOWERY,

**ORDER ADOPTING
REPORT AND RECOMMENDATION
OF MAGISTRATE JUDGE**

Defendants.

Pamela Hodges Nissen, **MCGRANN SHEA ANDERSON CARNIVAL
STRAUGHN & LAMB, CHTD**, 800 Nicollet Mall, Suite 2600, Minneapolis,
MN 55402, for defendants.

Steven V. Rose, Jean B. Roth and Stephen H. Parsons, **MANSFIELD TANICK
& COHEN, PA**, 220 South Sixth Street, Suite 1700, Minneapolis, MN 55402,
for defendants.

Based upon the Findings of Fact, Conclusions of Law, and Recommendation by United
States Magistrate Judge Franklin L. Noel dated September 26, 2007, all the files and records, and
no objections having been filed to said Report and Recommendation,

IT IS HEREBY ORDERED that this matter is referred back to Magistrate Judge Noel to
conduct an evidentiary hearing to determine the amount of unpaid fringe benefit contributions.
Following the evidentiary hearing, Magistrate Judge Noel will issue an additional Report and
Recommendation detailing the amount of unpaid benefit contributions.

DATED: November 21, 2007
at Minneapolis, Minnesota.

s/John R. Tunheim
JOHN R. TUNHEIM
United States District Judge